IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9984 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMALNAYAN P VYAS

Versus

STATE OF GUJARAT

Appearance:

MR BP MUNSHI for Petitioner

MR HN SOMPURA, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 4

MR MANOJ N POPAT for Respondent No. 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/05/2001

ORAL JUDGEMENT

Rule. Mr.Sompura, learned AGP waives service of rule for respondent No.1 and Mr.Manoj Popat, learned

advocate waives service of rule for respondent Nos.4 and 5.

2. While adjourning the hearing of this petition to 27.4.2001 on 11.4.2001 it was made clear that the matter would be heard peremptorily since the petition involves the question of nonpayment of pension to the retired employee. Accordingly the petition is taken up for final disposal today.

3. The petitioner retired as an Assistant Registrar of the Gujarat Ayurved University on 30.11.1997 on reaching the age of superannuation. It appears that the petitioner had earlier opted for Contributory Provident Fund Scheme, but by the Government Resolution dated 21.1.1989 the State Government gave option of the Pension Scheme to the employees of the Gujarat Ayurved University. The relevant portion of the Government Resolution reads as under :-

> ".....After careful consideration, Government is pleased to direct that the pension, gratuity and other retirement benefits admissible to the Gujarat State Government servants under the Revised Pension Rules, 1950 contained in Appendix-XIV to BCSR Rules, Volumes II, as amended from time to time, the family pension scheme sanctioned in Government Resolution, Finance Department No.FPS-1071-J, dated 1.1.72 as amended from time to time should be made applicable to the full time nonteaching staff of the Gujarat Ayurved University and teaching staff of the Gulabkunverba Ayurved Mahavidyalaya of the Gujarat Ayurved University under the Health and Family Welfare Department in this State with effect from 1.10.81 and to the staff who was in service of the University on 23.6.76 to 30.9.81 as provided in the Statute No.175 (B).
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> .....Where the members of staff eligible for the scheme have retired/resigned after 1.10.81 to the date of issue of this Government Resolution and who have received their CPF amount including the University contribution and Government's share together with the interest thereon, desires to opt for pension scheme as admissible under this Government Resolution should execute undertaking as in Appendix-B alongwith an option as provided under this scheme. In such cases the amount received on account of University's contribution, Government's share and interest earned thereon by

the member shall be adjusted against the arrears of pension and amount of D.C.R.G. admissible under this scheme. If the amount exceeds the amount of arrears of pension so received D.C.R.G. payable to him the balance amount shall be paid by him within two months in the Government Treasury."

4. The University amended its Statutes, particularly Statute No.175 on the basis of the aforesaid Government Resolution on 18.6.1998 i.e. the date on which the Chancellor granted his assent to the amended Statute. That Statute is set out at Annexure-C to the petition. The question arose as to what was to be done with regard to the employees who retired between 1.10.1981 to 18.6.1998. The Statute was amended to deal with that class of employees. The University issued the circular and invited the employees to give option whether they wanted to switch-over from the Contributory Provident Fund Scheme to Pension Scheme. That circular dated 20/22.7.1998 is at Annexure-D to the petition.

In response to the said circular, in all 12 employees who had retired / resigned between 1.10.1981 and 18.6.1998 gave their option for such switch-over from the Contributory Provident Fund Scheme to Pension Scheme. The petitioner was one of them. There were two more applicants who gave their option but with whom we are not concerned in this petition. The University accepted the above option forms subject to the approval by the State Government. However, the State Government declined to grant approval and communicated that decision by letter dated 14.6.2000 (Annexure-N to the petition) on the ground that the amendment to Statute No.175 of the University came into force on 18.6.1998 which was the date on which the Chancellor granted his assent, hence, the benefits of the Pension Scheme could have been given only to the employees who retired after 18.6.1998 and since the petitioner had retired on 30.11.1997 the petitioner was not entitled to this benefit. It is to challenge the aforesaid decision that the petitioner has approached this Court.

5. As far as the respondent - Gujarat Ayurved University is concerned, in view of the fact that the University itself had invited the options from the employees who had retired between 1.10.1981 to 18.6.1998 and that the University itself had accepted the same (albeit subject to Government approval) there is no question of any resistance from the University to the petitioner's claim for permission to switch-over from the

Contributory Provident Fund Scheme to the Pension Scheme. The contesting respondent is the State Government on whose behalf affidavit-in-reply is filed reiterating the same stand which was taken up in the impugned reply dated 14.6.2000 (Annexure-N to the petition).

6. When the Government itself had issued the Resolution dated 21.1.1989 applying the Government Resolution dated 1.1.1972 as amended from time to time to the full time nonteaching staff of the Gujarat Ayurved University and teaching staff of the Gulabkunverba Ayurved Mahavidyalaya of the said University with effect from 1.10.1981 and even to the staff who was in service of the University between 23.6.1976 to 30.9.1981 and Clause 1(c)(iv) specifically provided that where the members of staff eligible for the scheme have retired / resigned after 1.10.1981 to the date of issue of the Government Resolution (21.1.1989) and who have received their CPF amount desire to opt for pension scheme as admissible under the said Government Resolution should execute undertaking etc., it is not open to the Government to contend now that the pension scheme was not applicable to the University employees who had retired prior to 18.6.1998.

7. The learned counsel for the petitioner has also contended that M/s V.J.Thakar and C.P.Shukla were the employees of the University and they had also retired prior to 1998 and still they have been given the benefits of the Pension Scheme.

The learned AGP contends that the said employees had never opted for the Contributory Provident Fund Scheme earlier and they had only opted for the Pension Scheme, therefore, there was no question of discrimination.

When the Government Resolution dated 21.1.1989 is so eloquent, whether the cases of M/s V.J.Thaker and C.P.Shukla stand on the same footing or not has no consequence. The petitioner's case is squarely covered by the Government Resolution dated 21.1.1989.

8. In view of the above, the petition succeeds and the same is allowed. The impugned order dated 14.6.2000 (Annexure-N to the petition) is quashed and set aside. The respondents are directed to give the petitioner benefits of the Government Resolution dated 21.1.1989 (Annexure-O to the petition) and the Office Order dated 21.11.1998 (Annexure-F to the petition). The retiral dues as per the aforesaid directions shall be computed

within two months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier and after adjusting the Contributory Provident Fund amount as per the formula contained in the aforesaid Government Resolution and the relevant Resolutions applicable, the petitioner shall be paid the arrears of pension within two months from the date of computation as directed above.

9. Rule is made absolute with no order as to costs.

(M.S.Shah,J)
(pathan)